IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1115 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ARVINDBHAI ARJUNBHAI KOLI PATEL THRO.HIS BROTHER

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for the Petitioner.

Mr.A.Y. Kogje, Assistant GOVERNMENT PLEADER, for Respondent No. 1-3

MR PARESH UPADHYAY for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 01/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner has challenged the detention order 21.12.2003, by which brother of the petitioner is detained as a 'bootlegger' under the provisions of the Prevention of Anti-social Activities Act, 1985 ("PASA", for short). In the grounds of detention supplied to the detenu, there is a

reference about three pending criminal cases against the detenu. All these cases are under the Bombay Prohibition Act. It is alleged against the detenu that he is illegally dealing in country liquor. The authority, after having been satisfied itself about the alleged illegal activity of the brother of the petitioner, has detained him under PASA.

The authority has considered the statements of two witnesses, whose names are not disclosed to the detenu, as, the witnesses have apprehended about their safety in case their names are disclosed.

Mr.Kapadia, learned Advocate for the petitioner, has challenged the aforesaid order by submitting that the cases being prohibition cases, it cannot be said that the brother of the petitioner can be said to have committed any breach of public order. So far as this point is concerned, though the said point is raised, the learned Advocate for the petitioner did not press the said point.

The learned Advocate for the petitioner urged that there is a delay in passing the detention order. According to him, the detaining authority has passed the detention order relying upon the three cases registered against the detenu under the Prohibition Act. The last offence is registered on 22.11.2003 and the detention order is passed after one month thereafter. He submitted that if the allegations are really of such a grievous nature, it was not necessary that the authority should wait for a month. To substantiate the say of the petitioner, the learned Advocate for the petitioner has relied upon the decision of this Court in Special Civil Application No.5321 of 2002, rendered on 29.8.2002, wherein this Court held that the last registered case against the detenu is on 28.3.2002 and the order of detention has been passed on 30.4.2002 and hence, there is a delay in passing the order of detention. It is also pointed out by the learned Advocate for the petitioner that even the statement of the witnesses is also recorded prior to such registered case. In that view of the matter, it was not necessary to wait for a period of one month. Since the delay is not properly explained in the reply, there is no alternative but to accept the contention of the petitioner in view of the decision of the learned single Judge of this Court.

Under these circumstances, the petition is required to be allowed on the ground of non-explanation of delay in passing the detention order after the last incident.

It is, however, required to be noted that the detenu is found to have been illegally dealing in country liquor. Such activities are very dangerous and considering the fact that the detenu has repeatedly indulged in the aforesaid offences under the Prohibition Act, even though he is released on bail in earlier case. In such type of cases, the Magistrates should not grant bail in a routine manner. Mr.Kogje pointed out that, normally, when the petitioner is released on bail, he is granted bail subject to conditions, such as, he will not repeat the said offence. Mr.Kogje submitted that the State may consider filing an application before the appropriate court for cancellation of the bail granted in the last case on the ground that the petitioner has committed breach of the bail conditions and since he has repeated the offence, the State may move the appropriate court for cancellation of the bail, and it is for the appropriate court to consider this aspect. Mr.Kogje submitted that dealing in illicit liquor may result in some untoward incident in the area and the Government may move appropriate court for cancellation of bail. However, it is naturally open for the Government to act in accordance with law. This Court is not expected to say anything as it is beyond the scope of the present proceedings. In any case, if any such application is made, that also is required to be decided by the concerned court in accordance with law. So far as the detention order is concerned, the same is required to be set aside.

The petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless he is required in connection with any other case. The Rule is made absolute accordingly.

Direct service is permitted.

July 1, 2004 (P.B. Majmudar, J.)

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(apj)